

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

PATTIVA McKEAN,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 06-526-***
)	
NORFOLK SOUTHERN RAILWAY)	
COMPANY, a Virginia corporation,)	
)	
Defendant.)	

NOTICE OF SUBPOENA DUCES TECUM

PLEASE TAKE NOTICE that, pursuant to Rule 45 of the Federal Rules of Civil Procedure Defendant has served or will serve the attached subpoena duces tecum on The Cellco Partnership DBA Verizon Wireless, 180 Washington Valley Rd., Bedminster, NJ 07921.

POTTER ANDERSON & CORROON LLP

By: /s/ David E. Moore
Daniel F. Wolcott, Jr. (#284)
David E. Moore (#3983)
Hercules Plaza, 6th Floor
1313 N. Market Street,
P.O. Box 951
Wilmington, Delaware 19899
(302) 984-6000
dwolcott@potteranderson.com
dmoore@potteranderson.com

Dated: August 29, 2007
811536 / 30577

Counsel for Defendant
Norfolk Southern Railway Company

~~A088 (Delaware Rev. 7/00) Subpoena in a Civil Case~~

Issued by the
UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE

PATTIVA McKEAN,
 Plaintiff,

SUBPOENA IN A CIVIL CASE

v.
 NORFOLK SOUTHERN RAILWAY
 COMPANY, a Virginia corporation,
 Defendant.

Case Number:¹ 06-526-***

TO: The Cellco Partnership DBA Verizon Wireless
 180 Washington Valley Rd.
 Bedminster, NJ 07921

Attn: Custodian of Records
 Fax: 888-667-0028

- ☐ YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME

- ☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case

PLACE OF DEPOSITION

DATE AND TIME

- ☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

See attached Duces Tecum

PLACE

Potter Anderson & Corroon LLP, Hercules Plaza, 6th Floor, 1313 North Market Street, P.O. Box 951, Wilmington, DE 19899-0951

DATE AND TIME

September 28, 2007 at 9:00 a.m.

- ☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

DATE

8/29/07

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER David E. Moore, Esquire (ID No. 3983), Potter Anderson & Corroon LLP, Hercules Plaza, 6th Floor, 1313 North Market Street, P.O. Box 951, Wilmington, DE 19899

(See Rule 45, Federal Rules of Civil Procedure, parts C & D on next page)

¹ If action is pending in district other than district of issuance, state district under case number.

A088 (Delaware Rev. 7/00) Subpoena in a Civil Case

PROOF OF SERVICE

DATE

PLACE

SERVED

SERVED ON (PRINT NAME)

MANNER OF SERVICE

SERVED BY (PRINT NAME)

TITLE

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on _____
DATE

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, Federal Rules of Civil Procedure, Parts C & D:

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a Subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction which may include, but is not limited to, lost earnings and reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

- (i) fails to allow reasonable time for compliance,
- (ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or

- (iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or
- (iv) subjects a person to undue burden.

(B) If a subpoena

- (i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- (ii) Requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
- (iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena, or, if the party in who behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

DUCES TECUM: Copies of all records relating to the accounts of **PATTIVA McKEAN** (SSN: **527-41-2050**), specifically cell phone numbers **(302) 258-6937** and **(443) 783-0147**, and referring to incoming and outgoing calls on November 29, 2004 (the date of accident in the underlying litigation).

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

CERTIFICATE OF SERVICE

I, David E. Moore, hereby certify that on August 29, 2007, the attached document was electronically filed with the Clerk of the Court using CM/ECF which will send notification to the registered attorney(s) of record that the document has been filed and is available for viewing and downloading.

I further certify that on August 29, 2007, I have Electronically Mailed the documents to the following person(s):

Nicholas H. Rodriguez
Schmittinger and Rodriguez, P.A.
414 South State Street
P.O. Box 497
Dover, DE 19903-0497
nrodriguez@schmittrod.com

/s/ David E. Moore
Daniel F. Wolcott, Jr. (#284)
David E. Moore (#3983)
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